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December 22, 2022

VIA CM/ECF

The Honorable Gregory B. Williams
United State District Court for the
District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3570

Re: *Corteva Agriscience LLC v. Monsanto Company, et al.*
C.A. No. 22-1046 (GBW)

Dear Judge Williams:

Although the Court has not set a Scheduling Conference in the above-referenced matter, at Plaintiff's request, the parties have prepared the attached proposed Scheduling Order. Plaintiff requests that a Scheduling Conference be held as soon as practicable since Defendants have taken the position that they have no obligation to produce their core technical documents (that Corteva believes were due on December 14, 2022) until 30 days after a Rule 16 conference has occurred.

Defendants submit that the Scheduling Conference in this non-ANDA patent case can take place in the ordinary course at the Court's convenience, and note that the patent-in-suit is subject to a third-party reexamination request at the U.S. Patent & Trademark Office (not filed by Defendants) for which a decision can be expected no later than February 20, 2023, and that it might make sense to hold a Scheduling Conference after a decision on that reexamination request. As for Defendants' core technical documents, Defendants note that, under Paragraph 4 of the Delaware Default Standard for Discovery, the timing of such disclosures is in relation to the Scheduling Conference, and further note in any event that Plaintiff's November 14, 2022 submission was incomplete, as it did not contain a damages model.

Plaintiff disagrees with delaying the Scheduling Conference because the pending decision only concerns whether to begin a reexamination proceeding, and the only proposed rejection is for obviousness-type double patenting, which can be overcome at any time with a terminal disclaimer.

The parties' proposed Scheduling Order follows the Court's form order, except that:

- (1) the parties agree to exchange Rule 26(a)(1) initial disclosures ten days (rather than five days) after entry of the proposed Scheduling Order (§ 1);
- (2) the parties have specified that depositions of expert witnesses are excluded from the hours limitation on deposition discovery (§ 4(e)(i));

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(3) the parties agree to submit a joint letter to the Court no later than the date of their Joint Claim Construction Brief (rather than Defendants' Answering Claim Construction Brief), notifying the Court (i) whether they request leave to present testimony at the hearing; and (ii) the amount of time they are requesting be allocated to them for the hearing (§ 10);

(4) the parties agree to include deadlines related to the potential that Defendants will rely on an advice of counsel defense to indirect infringement/willful infringement (§ 13).

The parties' competing scheduling proposals are set forth in brackets in the proposed Scheduling Order, and disputes are summarized in the chart below. The parties' Scheduling Order disputes are limited to differences in proposed deadlines, except that the parties dispute (1) whether depositions of the inventors of the patent-in-suit should be limited to 7 or 14 hours; and (2) Defendants dispute the timing and completeness of Plaintiff's disclosure of its Damages Model, which Plaintiff purports to have already served.

EVENT	PLAINTIFF'S PROPOSED DEADLINES	DEFENDANTS' PROPOSED DEADLINES
Default Standard Paragraph 3 Initial Disclosures (§ 1)	10 days from entry of Scheduling Order	30 days from entry of Scheduling Order
Filing of Joint Proposed Protective Order (§ 15)	10 days from entry of Scheduling Order	30 days from entry of Scheduling Order
Plaintiff to Identify Accused Product(s) and Produce the File History for Each Asserted Patent (§ 3(a))	Plaintiff served its <i>Disclosure of Asserted Patent, Accused Products, and Damages Model</i> and produced the file history for the asserted patent on November 14, 2022 [Plaintiff disputes that the reasonable royalty damages model identified in its November 14, 2022 submission was incomplete.]	30 days after Rule 16 Scheduling Conference [Plaintiff's November 14, 2022 submission was incomplete.]
Defendants to Produce Core Technical Documents and Sales Figures for the Accused Product(s) (§ 3(b))	December 14, 2022	60 days after Rule 16 Scheduling Conference
Plaintiff to Provide Initial Infringement Chart(s) (§ 3(c))	January 13, 2023	90 days after Rule 16 Scheduling Conference

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EVENT	PLAINTIFF'S PROPOSED DEADLINES	DEFENDANTS' PROPOSED DEADLINES
Defendants to Provide Initial Invalidity Contentions (¶ 3(d))	February 12, 2023	120 days after Rule 16 Scheduling Conference
Exchange of List of Claim Terms and Proposed Constructions (¶ 8)	Friday, March 3, 2023	Friday, September 15, 2023
Respond to and Provide Proposed Constructions for Any Terms for which the Party Did Not Initially Provide a Construction (¶ 8)	Friday, March 17, 2023	Friday, October 13, 2023
Substantial Completion of Document Production (¶ 4(b))	Friday, March 17, 2023	Friday, September 8, 2023
Joint Claim Construction Chart Due (¶ 8)	Friday, March 24, 2023	Friday, October 20, 2023
Deadline to Submit Technology Tutorial (¶ 7)	Friday, March 24, 2023	Friday, October 20, 2023
Interim Status Report on Discovery (¶ 11)	Friday, March 31, 2023	Friday, September 29, 2023
Plaintiff's Opening Claim Construction Brief (¶ 9)	Friday, April 7, 2023	Friday, November 3, 2023
Plaintiff to Provide Final Infringement Contentions (¶ 3(e))	Friday, April 21, 2023	Friday, April 19, 2024
Deadline for Plaintiffs to Supplement Identification of All Accused Products (¶ 12)	Friday, April 21, 2023	Friday, April 19, 2024
Defendants to Provide Final Invalidity Contentions (¶ 3(f))	Friday, April 21, 2023	Friday, April 19, 2024
Deadline for Defendants to Supplement Invalidity References (¶ 12)	Friday, April 21, 2023	Friday, April 19, 2024
Last Day to Join Other Parties and Amend Pleadings (¶ 2)	Friday, April 28, 2023	Friday, February 15, 2024
Defendants' Answering Claim Construction Brief (¶ 9)	Friday, April 28, 2023	Friday, December 1, 2023
Plaintiff's Reply Claim Construction Brief (¶ 9)	Friday, May 12, 2023	Friday, December 22, 2023

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EVENT	PLAINTIFF'S PROPOSED DEADLINES	DEFENDANTS' PROPOSED DEADLINES
Defendants' Sur-Reply Claim Construction Brief (¶ 9)	Friday, May 26, 2023	Friday, January 12, 2024
Filing of Joint Claim Construction Brief (¶ 9)	Friday, June 2, 2023	Friday, January 26, 2024
Deadline to Request Leave to Present Testimony at Claim Construction Hearing and Inform Court of Time Needed for Hearing (¶ 10)	Friday, June 2, 2023	Friday, January 26, 2024
Fact Discovery Cut-Off (¶ 4(a))	Wednesday, June 7, 2023	Friday, April 19, 2024
Hearing on Claim Construction (¶ 10)	Wednesday, June 28, 2023, or the earliest possible date thereafter	End of February, 2024
Opening Expert Reports for Party Having Initial Burden of Proof (¶ 4(f)(i))	Friday, August 11, 2023	Friday, May 31, 2024
Rebuttal Expert Reports (¶ 4(f)(i))	Friday, September 8, 2023	Friday, August 2, 2024
Reply Expert Reports for Party Having Initial Burden of Proof (¶ 4(f)(i))	Friday, September 29, 2023	Friday, September 13, 2024
Expert Discovery Cut-Off (¶ 4(f)(iii))	Friday, October 27, 2023	Friday, October 11, 2024
Case Dispositive Motions (Opening Briefs) (¶ 13(a))	Friday, November 17, 2023	Friday, November 22, 2024
Answering Case Dispositive Briefs (¶ 13(a))	Friday, December 15, 2023	Wednesday, December 18, 2024
Reply Case Dispositive Briefs (¶ 13(a))	Tuesday, January 9, 2024	Thursday, January 16, 2025
Deadline to File Proposed Voir Dire, Preliminary Jury Instructions, and Final Jury Instructions (¶ 20)	Thursday, April 25, 2024	Thursday, May 8, 2025
Deadline to File Joint Proposed Final Pretrial Order (¶ 19)	May __, 2024	May __, 2025
Pretrial Conference (¶ 19)	Monday, May 6, 2024	Monday, May 19, 2025

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EVENT	PLAINTIFF'S PROPOSED DEADLINES	DEFENDANTS' PROPOSED DEADLINES
Trial (¶ 21)	Mid- to late May 2024	Late May 2025

Respectfully submitted,



Chad S.C. Stover (No. 4919)

cc: Counsel of Record (via CM/ECF)